

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION

UNITED STATES OF AMERICA

CR NO.: 1:06-1254  
Columbia, SC  
June 18, 2008

-vs-

KELVIN BERNARD BADGER,

Defendant

BEFORE HON. MARGARET B. SEYMOUR  
UNITED STATES DISTRICT COURT JUDGE  
SENTENCING HEARING

APPEARANCES:

FOR GOVERNMENT: HON. W. WALTER WILKINS  
UNITED STATES ATTORNEY  
BY: J.D. ROWELL  
Assistant United States Attorney  
1441 Main Street  
Columbia, SC 29201

FOR DEFENDANT: ROBERT J. HARTE, ESQ.  
P.O. Box 1959  
Aiken, SC 29802

GLENN WALTERS, ESQ.  
P.O. Box 1346  
Orangeburg, SC 29116

COURT REPORTER: DANIEL E. MAYO, CSR, RDR  
Certified Realtime Reporter  
901 Richland Street  
Columbia, SC 29201

STENOTYPE/COMPUTER-AIDED TRANSCRIPTION

1 THE COURT: Mr. Rowell?

2 MR. ROWELL: Good morning your Honor. The first case  
3 is United States versus Kelvin Bernard Badger, criminal number  
4 1:06-1254. Your Honor, Mr. Badger is present represented by  
5 counsel, Mr. Harte and Mr. Walters. We're here for a  
6 sentencing hearing.

7 THE COURT: All right. Thank you. Mr. Badger, you  
8 may come forward with your attorneys. Mr. Badger, have you had  
9 an opportunity to review the presentence report?

10 DEFENDANT: Yes, ma'am.

11 THE COURT: Mr. Harte and Mr. Walters, have you also  
12 reviewed that report?

13 MR. WALTERS: Yes, ma'am.

14 MR. HARTE: Yes, your Honor.

15 THE COURT: Are there any objections to the report?

16 MR. WALTERS: No objection, ma'am.

17 MR. HARTE: No.

18 THE COURT: There being no objections, as findings of  
19 fact of this court for the purpose of sentencing, the court  
20 finds that the custody minimum maximum sentence on count one is  
21 ten years, count two is mandatory life. Supervised release on  
22 count one is not more than three years and count two at least  
23 ten years. Probation is prohibited. The fine on count one is  
24 \$250,000 and count two \$8 million. The special assessment fee  
25 is \$100 for count one and \$100 for count two.

1           The guideline provisions are as follows: The total  
2 offense level is 37, the criminal history category is six.  
3 Probation is prohibited. The guideline range is life  
4 imprisonment with the statutorily required minimum sentence of  
5 imprisonment. When the statutorily required minimum term of  
6 imprisonment is greater than the applicable guideline range,  
7 which is 360 to life, the statutorily required minimum term of  
8 imprisonment becomes the guideline sentence, ten years of  
9 supervised release and a \$200 special assessment fee.

10           Any objection to the statutory or guideline range?

11           MR. HARTE: No objection, your Honor.

12           MR. WALTERS: No objection, your Honor.

13           MR. ROWELL: No, ma'am.

14           THE COURT: The court adopts the previously stated  
15 provisions. At this time I'll hear from the attorneys for Mr.  
16 Badger with regard to the sentence to be imposed.

17           MR. HARTE: Your Honor, my understanding is your Honor  
18 does not have any discretion in this matter and Kelvin will  
19 receive a life sentence. I will tell you that his family is  
20 here with him today. He and I have worked together I guess for  
21 well over a year on state charges as well as the federal  
22 adopted charges. He has been a pleasant young man, he's never  
23 given me the the least bit of trouble. I think he would do  
24 well if he didn't have this life sentence.

25           THE COURT: Anything from you, Mr. Walters?

1 MR. WALTERS: May it please the court, your Honor, of  
2 course, my client inquired as to his incarceration. His family  
3 is in Barnwell, and, of course, he indicated that they are near  
4 the facility located in Estill.

5 THE COURT: I beg your pardon?

6 MR. WALTERS: In Estill, South Carolina.

7 THE COURT: All right. Mr. Badger, do you have any  
8 statements that you would like to make on your behalf?

9 DEFENDANT: No, ma'am.

10 THE COURT: All right. Is there anything from the  
11 government?

12 MR. ROWELL: No, ma'am.

13 THE COURT: Is there anything else?

14 MR. HARTE: No, your Honor.

15 MR. ROWELL: No, ma'am.

16 THE COURT: All right. Mr. Badger, having calculated  
17 and considered the advisory sentencing guidelines, and having  
18 also considered the relevant statutory sentencing factors that  
19 are contained in Title 18 United States Code, Section 3553(a),  
20 it is the judgment of the court that the defendant Kelvin  
21 Bernard Badger is hereby committed to the custody of the Bureau  
22 of Prisons to be imprisoned for a term of life. This term  
23 consists of 120 months as to count one, and life as to count  
24 two, these terms to run concurrently. These terms reflect the  
25 statutorily required sentence pursuant to 21 United States Code

1 Section 841(a)(1), (b)(1)(A) and 851, and the United States  
2 Sentencing Guidelines Section 5G1.1(b). The guideline  
3 provisions states that where a statutorily required minimum is  
4 greater than the maximum of the applicable guideline range, the  
5 statutorily required minimum sentence shall be the guideline  
6 sentence. In this case, it is life.

7 According to the Fourth Circuit's decision in the  
8 United States versus Kratsas, the court finds that when a  
9 defendant is facing a sentence of life the court must apply the  
10 three-prong test articulated by the Supreme Court in Solem,  
11 recognizing that an extensive proportionality analysis is  
12 required in cases involving a life sentence.

13 Applying the Solem case's first prong, the defendant's  
14 offense was extremely grave because drug use is a pervasive,  
15 destructive force in American society. The quantity of drugs  
16 attributable to the defendant as well as his admission that he  
17 earned his living selling drugs reflects he was not merely a  
18 user or even a single distributor of the drugs, but was a major  
19 supplier of powder cocaine, crack cocaine, and marijuana, and  
20 that the defendant had discussed his plans to murder one of the  
21 investigators in the case for the purpose of eliminating him as  
22 a government witness.

23 Applying Solem's second prong, the court finds that a  
24 life sentence for a major drug violation is not  
25 disproportionate in comparison with other sentences under the

1 guidelines. Applying Solem's third prong, the court finds that  
2 a review of state statutes within this circuit disclose the  
3 existence of similarly severe sentences for drug cases of the  
4 magnitude involved in this case. This court has also compared  
5 this sentence with other sentences of this magnitude imposed by  
6 this court and finds that a life sentence without parole is  
7 appropriate in this case.

8 It does not appear that you have the ability to pay a  
9 fine; therefore, the fine is waived. You shall pay the \$200  
10 mandatory special assessment fee, and this consists of \$100  
11 each as to counts one and counts two.

12 If you are released from imprisonment you will be  
13 placed on supervised release for a term of ten years. This  
14 term consists of three years as to count one and ten years as  
15 to count two, these terms to run concurrently. Within 72 hours  
16 of your release from of the custody of the Bureau of Prisons  
17 you shall report in person to the probation office in the  
18 district to which you are released.

19 While you are on supervised release you shall comply  
20 with the mandatory and standard conditions of supervision that  
21 are outlined in Title 18 United States Code Section 3583(d),  
22 and you shall also comply with the following special condition:  
23 You shall satisfactorily participate in a substance abuse  
24 treatment program, to include urinalysis, as approved by the  
25 United States Probation Office.

1           The findings of fact of the presentence report are  
2       adopted as the reasons and incorporated by reference.

3           Any objection to the form of the sentence?

4           MR. ROWELL: Not from the government.

5           MR. HARTE: No, your Honor.

6           MR. WALTERS: No, your Honor.

7           THE COURT: Mr. Badger, you are advised that a  
8       criminal defendant has the right to appeal a sentence in  
9       certain circumstances, and you should discuss carefully with  
10      your lawyers as to whether or not you are entitled to an appeal  
11      in this case. With few exceptions, any notice of appeal must  
12      be filed within ten days after judgment in your case is  
13      entered. Do you understand that?

14          DEFENDANT: Yes, ma'am.

15          THE COURT: All right. I will make a recommendation  
16      that Mr. Badger be incarcerated at a facility that would place  
17      him close to his family. Anything else?

18          MR. HARTE: No, your Honor.

19          MR. WALTERS: No, your Honor.

20          MR. ROWELL: No, ma'am.

21          THE COURT: All right.

22          MR. WALTERS: Thank you.

23          (Recess, 10:41 a.m.)  
24  
25

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

Date: 2-6-09

s/ Daniel E. Mayo